

BEFORE THE BOARD OF HEARING AID DEALERS AND FITTERS

STATE OF IDAHO

ORIGINAL

In the Matter of the License of:)
) Case No. HAD-P5B-01-00-020
E.J.G. FITZGERALD,)
License No. H-205,) **STIPULATION AND**
) **CONSENT ORDER**
Respondent.)
_____)
HAD\Fitzgerald\P21621la

WHEREAS, information having been received by the Idaho State Board of Hearing Aid Dealers and Fitters (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against E.J.G. Fitzgerald (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A.

1. The Board may regulate the practice of hearing aid dealers and fitters in the State of Idaho in accordance with title 54, chapter 29, Idaho Code.

2. Respondent E.J.G. Fitzgerald is a licensee of the Idaho State Board of Hearing Aid Dealers and Fitters and holds License No. H-205 to engage in the practice of hearing aid dealing and fitting in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 29, Idaho Code.

3. On March 6, 2001, a Judgment was entered against Respondent in Jacobson v. Fitzgerald, Kootenai County Small Claims Department Case No. CV01-606, for \$2,535.00, which amount arose from a hearing aid transaction (hereinafter the "Judgment"). A true and correct copy of the Judgment is attached hereto as Exhibit A.

4. On or about January 25, 2002, over ten months from the date of entry, the Judgment was paid in full. A true and correct copy of the Kootenai County Sheriff's Department Civil Garnishment Spread Sheet is attached here to Exhibit B.

5. Respondent failed to pay a valid judgment which arose out of a hearing aid sales transaction within two (2) months of the date the judgment became final.

6. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of hearing aid dealers and fitters, specifically Idaho Code § 54-2912(b)(7). Violations of this law would further constitute grounds for disciplinary action against Respondent's license to engage in the practice of hearing aid dealing and fitting in the State of Idaho.

7. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby admits the violations and agrees to the discipline against his license as set forth in Section C below.

B.

I, E.J.G. Fitzgerald, by affixing my signature hereto, acknowledge that:

1. I have read and admit the allegations pending before the Board, as stated above in section A. I further understand that these allegations constitute cause for disciplinary action upon my license to engage in the practice of hearing aid dealing and fitting in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of hearing aid dealers and fitters in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. License No. H-205 issued to Respondent E.J.G. Fitzgerald is hereby suspended for a period of thirty (30) days, which suspension shall be stayed provided Respondent complies with this Stipulation and provided Respondent complies with all laws and rules governing the practice of hearing aid dealing and fitting. Should the Board find that Respondent has violated the terms of this Stipulation and/or the laws and rules governing the practice of hearing aid dealing and fitting, the term of suspension shall be immediately imposed.

2. Respondent shall pay to the Board an administrative fine in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) within thirty (30) days of the entry of the Board's Order.

3. Respondent shall pay investigative costs and attorney fees in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) within thirty (30) days of the entry of the Board's Order.

4. Respondent's License No. H-205 shall be placed on probation for a period of one (1) year. The conditions of probation are as follows:

a. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of hearing aid dealing and fitting in the State of Idaho.

b. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

c. In the event Respondent should leave Idaho to reside or to practice outside of the state, Respondent must provide written notification to the Board of the

dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of residency or practice outside of Idaho will not apply to the reduction of the probationary period or excuse compliance with the terms of this Stipulation.

d. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information.

e. Respondent shall make all files, records, correspondence or other documents available immediately upon the demand of any member of the Board's staff or its agents.

5. At the conclusion of the one-year probationary period, Respondent may request from the Board reinstatement of License No. H-205 without further restriction. Any request for reinstatement must be accompanied by written proof of compliance with the terms of this Stipulation. The Board retains discretion to grant reinstatement of Respondent's hearing aid dealers and fitters license or to deny reinstatement and continue the period of probation.

6. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

7. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-2912. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery,

cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. The Board shall have the right to make full disclosure of this Stipulation and Consent Order and the underlying facts relating hereto to any state, agency or individual requesting information subject to any applicable provisions of the Idaho Public Records Act, Idaho Code §§ 9-337-50.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

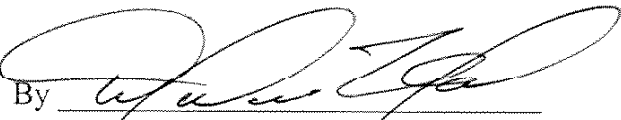
DATED this 27 day of September, 2002.


E.J.G. Fitzgerald
Respondent

I concur in this stipulation and order.

DATED this 5th day of November, 2002.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
David W. Lloyd
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-2914, the foregoing is adopted as the decision of the Board of Hearing Aid Dealers and Fitters in this matter and shall be effective on the 7 day of November 2002. **IT IS SO ORDERED.**

IDAHO STATE BOARD OF
HEARING AID DEALERS AND FITTERS

By 
Kelley Olenick, Acting Chair

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 7th day of November, 2002, I caused to be served a true and correct copy of the foregoing by the following method to:

E.J.G. Fitzgerald
916 Ironwood Drive
Coeur d'Alene, ID 83814

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

David W. Lloyd
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

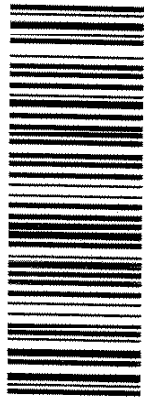
- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail



Rayola Jacobsen, Chief
Bureau of Occupational Licenses

CERTIFIED MAIL

STATE OF IDAHO
DEPARTMENT OF SELF-GOVERNING AGENCIES
Bureau of Occupational Licenses
Owyhee Plaza
1109 Main Street, Suite 220
Boise, ID 83702-5642



7000 1530 0005 5350 0035

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired
- Print your name and address on the reverse
- *So that we can return the card to you.*
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

E.J.G. Fitzgerald
916 Ironwood Drive
Coeur d'Alene, ID 83814

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

E.J.G. Fitzgerald 11/15

C. Signature

[Signature] ☐ Agent ☒ Addressee

D. Is delivery address different from item 1? ☒ Yes ☐ No

If YES, enter delivery address below:

3. Service Type

☒ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7000 1530 0005 5350 0035

PS Form 3811, July 1999

Domestic Return Receipt

102535-99-M-1789

7000 1530 0005 5350 0035

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided)

Stipulation & Consent of Addressee

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

E.J.G. Fitzgerald
916 Ironwood Drive
Coeur d'Alene, ID 83814

SENT BY
11/15/99
W.W.